

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION**

SD WHEEL CORP,

Plaintiff,

v.

Case No.: 1:21-cv-00778-WCG

LOGFRET, INC.,

Defendant.

LOGFRET, INC.,

Defendant/Third-Party Plaintiff,

v.

SCHMIDT, PRITCHARD & CO. INC.,

Third-Party Defendant.

**DEFENDANT/THIRD-PARTY PLAINTIFF, LOGFRET, INC.'S
THIRD-PARTY COMPLAINT**

NOW COMES Defendant and Third-Party Plaintiff, LOGFRET, INC. (“Logfret”), by its undersigned counsel, Foran Glennon Palandech Ponzi & Rudloff, PC and submits the following Third-Party Complaint against Third-Party Defendant, Schmidt, Pritchard & Co. Inc. (“Schmidt Pritchard”) and alleges as follows:

NATURE OF THE ACTION

1. This dispute arises from a breach of contract and/or breach of fiduciary duty which Schmidt Pritchard owed to Plaintiff, SD Wheel Corp. (“SD Wheel”) and Defendant/Third-Party Plaintiff Logfret, Inc. (“Logfret”).

THE PARTIES

2. Pursuant to its Complaint, SD Wheel is an Illinois corporation registered to transact business in Wisconsin with a principal place of business located at 1300 S. River St., Batavia, IL 60510 whose business involves selling automotive equipment.

3. Schmidt Pritchard is an Illinois corporation providing import and export business services. Schmidt Pritchard's primary address is 9801 Lawrence Ave #2 Schiller Park, IL 60176.

4. Logfret is a Delaware corporation with principal place of business is located at 301 Penhorn Avenue, Suite 1, Secaucus, NJ 07094 which offers services in the fields of international freight transport, cargo consolidation and de-consolidation, rail freight transport, project cargo, customs clearance, and warehousing and distribution.

JURISDICTION AND VENUE

5. The Court has supplemental jurisdiction over this third-party complaint under 28 U.S.C.A. § 1367(a), because the third-party complaint arises out of the same case or controversy as the action by Plaintiff against Defendant/Third-Party Plaintiff, Logfret.

FACTUAL ALLEGATIONS

6. On June 23, 2021 SD Wheel filed its Complaint (the "Complaint") against Logfret seeking, *inter alia* approximately \$306,277.70 in damages for unprocessed duty refunds.

7. On March 12, 2015, SD Wheel executed a form titled Customers Power of Attorney and Acknowledgement of Terms & Conditions of Service (the "Schmidt Pritchard PoA" a copy of which is attached as Exhibit 1).

8. Pursuant to the Schmidt Pritchard PoA, Schmidt Pritchard is authorized to act on behalf of SD Wheel, including in matters of customs duty refunds.

9. Specifically, the Schmidt Pritchard PoA provides that, on behalf of SD Wheel, Schmidt Pritchard may:

Make, endorse, sign, declare, or swear to any customs entry, withdrawal, declaration, certificate, bill of lading, carnet or any other documents required by law or regulation in connection with the importation, exportation, transportation, of any merchandise in or through the customs territory, shipped or consigned by or to said grantor;

Perform any act or condition which may be required by law or regulation in connection with such merchandise deliverable to said grantor; to receive any merchandise;

Make endorsements on bills of lading conferring authority to transfer title; make entry or collect drawback; and to make, sign, declare, or swear to any statement or certificate required by law or regulation for drawback purposes, regardless of whether such document is intended for filing with Customs;

Sign, seal, and deliver for and as the act of said grantor any bond required by law or regulation in connection with the entry or withdrawal of imported merchandise or merchandise exported with or without benefit of drawback, or in connection with the entry, clearance, lading, unlading or navigation of any vessel or other means of conveyance owned or operated by said grantor, and any and all bonds which may be voluntarily given and accepted under applicable laws and regulations, consignee's and owner's declarations provided for in section 485, Tariff Act of 1930, as amended, or affidavits or statements in connection with the entry of merchandise;

Sign and swear to any document and to perform any act that may be necessary or required by law or regulation in connection with the entering, clearing, lading, unlading, or operation of any vessel or other means of conveyance owned or operated by said grantor;

Authorize other Customs Brokers duly licensed within the territory to act as grantor's agent; to receive endorse and collect checks issued for Customs duty refunds in grantor's name drawn on the Treasurer of the United States; if the grantor is a nonresident of the United States, to accept service of process on behalf of the grantor;

And generally to transact Customs business, including filing of claims or protests under section 514 of the Tariff Act of 1930, or pursuant to other laws of the territories, in which said grantor is or may be concerned or interested and which may properly be transacted or performed by an agent and attorney;

10. Upon information and belief, the Schmidt Pritchard PoA has never been revoked.

11. On November 19, 2019 SD Wheel representatives sent three emails, labeled “Duty Refund Email #1,” “Duty Refund Email #2,” and “Duty Refund Email #3” (collectively “Duty Refund Emails”) to Logfret representatives.

12. In these emails, SD Wheel included numerous PDF documents and container numbers “for broker to start the refund process.”

13. Less than thirty minutes later, a representative of Logfret delivered all three emails to a representative of Schmidt Pritchard stating, “there are three emails with refund requests for the SD wheels exempt china duty taxes Let us know approximate time frame and if you need further information.”

14. Logfret then immediately informed SD Wheel that, “we have sent to broker will advise further details as soon as available.”

15. The “broker” referred to by SD Wheel and Logfret in their communications was Schmidt Pritchard.

16. Between the three emails, 42 container numbers were identified which corresponded to 31 entries.

17. As alleged in the Complaint, the 21 entries identified in Duty Refund Emails # 2 and #3 are the entries and refunds at issue in this dispute and are identified below:¹

Shipment Entry #	Import Date	Date Duty Paid to U.S. Customs	Liquidation Date	Protest Deadline Date	Duty Eligible for Exclusion	Duty Refund Email
045-0448407-4	02/15/19	03/14/19	01/24/20	07/22/20	\$5,687.50	2
045-0449963-5	02/19/19	03/11/19	01/24/20	07/22/20	\$4,153.00	2

¹ Note that Logfret has not conducted an analysis of the amounts or protest deadlines at issue, and merely repeats, without adopting, the allegations made by SD Wheel.

045-0448616-0	02/25/19	03/22/19	02/07/20	08/05/20	\$5,180.00	2
045-0450738-7	03/16/19	04/01/19	02/14/20	08/12/20	\$5,007.00	2
045-0451491-2	03/28/19	04/15/19	02/28/20	08/26/20	\$4,301.20	2
045-0452783-1	03/29/19	05/09/19	03/20/20	09/16/20	\$10,164.60	2
045-0453850-7	05/10/19	05/28/19	04/10/20	10/07/20	\$5,545.90	2
045-0455261-5	06/01/19	06/14/19	05/01/20	10/28/20	\$28,585.25	2
045-0455641-8	06/06/19	06/24/19	05/08/20	11/04/20	\$30,411.00	2
045-0456717-5	06/27/19	07/19/19	06/05/20	12/02/20	\$40,808.00	2
045-0456776-1	07/02/19	07/26/19	06/12/20	12/09/20	\$14,013.50	2
045-0457035-1	07/02/19	07/26/19	06/12/20	12/09/20	\$13,987.75	3
045-0458434-5	07/09/19	08/01/19	06/12/20	12/09/20	\$13,618.25	3
045-0458778-5	07/17/19	08/15/19	06/26/20	12/23/20	\$13,447.50	3
045-0458978-1	07/29/19	08/21/19	07/03/20	12/30/20	\$26,679.00	3
045-0460618-9	08/16/19	09/11/19	07/24/20	01/20/21	\$12,236.00	3
045-0462218-6	09/20/19	10/10/19	08/21/20	02/17/21	\$14,625.25	3
045-0462639-3	09/27/19	10/10/19	08/21/20	02/17/21	\$14,001.75	3
045-0462852-2	10/01/19	10/25/19	09/11/20	03/10/21	\$12,502.00	3
045-0462784-7	10/08/19	10/18/19	09/04/20	03/03/21	\$16,291.00	3
045-0463354-8	10/23/19	11/05/19	09/18/20	03/17/21	\$15,032.25	3

18. Schmidt Pritchard successfully obtained duty refunds for the containers identified in Duty Email #1.

19. Schmidt Pritchard failed to process refunds for the containers identified in Duty Email #2 and Duty Email #3.

20. Pursuant to the Complaint, the amount at issue in Duty Refund Email #2 and Duty Email #3 was approximately \$306,277.70.

FIRST CAUSE OF ACTION – BREACH OF CONTRACT

21. Logfret incorporates and realleges paragraphs 1 through 20, as though fully set forth herein at paragraph 21.

22. The Schmidt Pritchard PoA executed by SD Wheel authorized Schmidt Pritchard to act as SD Wheel's agent.

23. Logfret, as requested by SD Wheel on November 19, 2019, sent the information contained in Duty Email #1, Duty Email #2, and Duty Email #3 to Schmidt Pritchard.

24. In so doing, Logfret discharged its duty to SD Wheel.

25. At that point, Schmidt Pritchard, not Logfret, was acting as SD Wheel's agent and was solely responsible for processing the duty refunds requested by SD Wheel in Duty Email #1, Duty Email #2, and Duty Email #3.

26. The failure of Schmidt Pritchard to process the refunds requested in Duty Refund Email #1 and Duty Refund Email #2 is solely the responsibility of Schmidt Pritchard, and any resulting damages, if any, to SD Wheel, are solely the liability of Schmidt Pritchard.

27. In the alternative, however, should it be found that Schmidt Pritchard was acting as the agent of Logfret, rather than SD Wheel, and Logfret is responsible for the failure of Smith Pritchard to process the duty refunds requested by SD Wheel in Duty Email #2 and Duty Email #3, Schmidt Pritchard breached its contractual agreement with Logfret to process the duty refunds

and is liable to Logfret in the full amount of any liability of Logfret to SD Wheel for the failure to process those duty refunds.

SECOND CAUSE OF ACTION – NEGLIGENCE

28. Logfret incorporates and realleges paragraphs 1 through 27, as though fully set forth herein at paragraph 28.

29. In the alternative, however, if Schmidt Pritchard is found to have acted as Logfret's agent, Schmidt Pritchard owed Logfret a duty to act in accordance with the standard of care for professionals acting to obtain import duty refunds from the Federal Government.

30. Smith Pritchard breached that standard of care by failing to process the duty refunds requested by SD Wheel in Duty Email #2 and Duty Email #3 and is liable to Logfret for any amounts Logfret is found liable for to SD Wheel in connection with Duty Email #2 and Duty Email #3.

PRAYER FOR RELIEF

WHEREFORE, Defendant and Third-Party Plaintiff, LOGFRET, INC., prays this Court enter an Order of judgment in its favor and against Third-Party Defendant Schmidt Pritchard & Co. Inc., granting the following relief:

- A. Monetary damages from Schmidt Pritchard to Logfret equal to any amounts assessed against Logfret to SD Wheel on account of the Duty Refund issue described herein.
- B. That Schmidt Pritchard pay to Logfret any attorney fees and costs incurred by Logfret in defending against the Complaint or litigating this Third-Party Complaint.
- C. Any further relief as this Court deems just and proper.

Dated: October 26, 2021

/s/ Michael L. Foran

Michael L. Foran

Matthew R. Carlyon

FORAN GLENNON PALANDECH PONZI & RUDLOFF PC

222 North LaSalle Street, Suite 1400

Chicago, Illinois 60601

Tel: (312) 863-5000

Fax: (312) 863-5099

mforan@fgppr.com

mcarlyon@fgppr.com

Counsel for Defendant/Third-Party Plaintiff, Logfret, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above document was filed electronically with the above-captioned court, with notice of case activity to be generated and sent electronically by the Clerk of said court to the attorney listed below (with a copy to be mailed to any individuals who do not receive electronic notice from the Clerk) this 26th day of October, 2021.

Counsel for Plaintiff:

Sherry D. Coley

Tiffany E. Woelfel

DAVIS & KULTHAU

318 South Washington Street, Suite 300

Green Bay, Wisconsin 54301

Tel: (920) 431-2239

Fax: (920) 431-2279

scoley@dkattorneys.com

twoelfel@dkattorneys.com

/s/ Michael L. Foran

Michael L. Foran